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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/634,698
Filing Date: August 05, 2003
Appellant(s): MARIGLIANO, DONALD E.

Richard S. Finkelstein
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 12th, 2008 appealing from the Office action mailed May 29th, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,876,981	Berckmans	4-2005
US2003/0004853	Ram et al.	1- 2003

Official Notice

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-7, 10, 13-21 and 24-37 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent Publication Number 2003/0004853 to Ram et. al (hereinafter Ram).

As per claims 1, 15 and 24

Ram discloses presenting at least one option (page 2, paragraph [0028]) quote area presenting a plurality of option quotes (Figure 12: 124 & Figure 51) and presenting an order entry area comprising input areas for inputting two or more option orders (Figure 12: 128). Examiner notes that the input area can be used multiple times to accommodate the input of multiple orders.

Ram further discloses selection of one of the presented plurality of option quotes results in population of appropriate input areas of the order entry area with an option order corresponding to the selected option quote (Figure 12). Examiner notes that selecting a security could be done by typing or rather inputting the security symbol into the tab set 128. Examiner further notes that applicant is correct in saying that a display at a trader's location will display data for a selected security and the displayed data will be displayed in a tab set, however examiner further asserts that this information is not solely in tabs 120 or 124 but also in tab 128. Therefore, by selecting a security data is populated (value/bid/ask/last/change/high/low, etc.) that facilitates the ordering of securities. Finally examiner asserts that Ram (Figure 12: 128) thus does disclose displaying a plurality of data and populating data in an appropriate input area of an order entry area.

As per claims 2 and 16

Ram discloses receiving an instruction to place the two or more option orders and placing the two option orders (page 10, paragraph [0187]).

As per claim 4, 14, 18, 26 and 31

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Ram discloses receiving a selection of a second one of the presented plurality of option quotes (Level I data) (page 3, paragraphs [0042-0043]) and presenting details of a second option order corresponding to the second selected option quote in second appropriate input areas of the order entry area (Figure 16). Examiner notes that receiving and presenting option quote details is a process that can be repeated for multiple option orders by changing the symbol which updates the data chosen from the market order entry tab.

As per claims 5 and 19

Ram discloses receiving a number of option quotes to present in at least one of the at least one option quote area and presenting the number of option quotes in the at least one of the at least one option quote area (page 9, paragraph [0178], lines 1-8).

As per claims 6, 20, 27, 32 and 37

Ram discloses receiving a number of strike prices above and/or below a particular option strike price for which associated option quotes are presented in at least one of the at least one option quote area and presenting option quotes associated with the number of strike prices above and/or below the particular option strike price in the at least one of the at least one option quote area (Figure 46: 344a-f & page 16, paragraph [0291]).

As per claims 7, 21, 28 and 33

Ram discloses the particular strike price is equal to a current price of a security underlying the option (page 16, paragraph [0291], lines 9-11). Examiner notes that since the strike price is user configurable, the strike can be easily adjusted to equate the current price.

As per claim 10

Ram discloses presenting at least one option (page 2, paragraph [0028]) quote area presenting a plurality of option quotes (Figure 12: 124 & Figure 51) and a control usable to specify a number of strike prices above and/or below a particular option strike price for which associated option quotes should be presented in at least one of the at least one order entry area (page 16, paragraph [0291]). Examiner notes that since the strike price is user configurable, the strike can be easily adjusted to specify a number of strike prices above and/or below a particular option strike price.

Ram further discloses selection of one of the presented plurality of option quotes results in population of appropriate input areas of the order entry area with an option order corresponding to the selected option quote (Figure 12). Examiner notes that selecting a security could be done by typing or rather inputting the security symbol into the tab set 128. Examiner further notes that applicant is correct in saying that a display at a trader's location will display data for a selected security and the displayed data will be displayed in a tab set, however examiner further asserts that this information is not solely in tabs 120 or 124 but also in tab 128. Therefore, by selecting a security data is populated (value/bid/ask/last/change/high/low, etc.) that facilitates the ordering of securities. Finally examiner asserts that Ram (Figure 12: 128) thus does disclose

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displaying a plurality of data and populating data in an appropriate input area of an order entry area.

As per claim 13

Ram discloses an order entry area comprising input areas for inputting two or more option orders (Figure 16). Examiner notes that the input area can be used multiple times to accommodate the input of multiple orders.

As per claims 17, 25 and 35

Ram discloses receiving a selection of one of the presented plurality of option quotes (Level I data) (page 3, paragraphs [0042-0043]) and presenting details of an option order corresponding to the selected option quote in appropriate input areas of the order entry area (Figure 16).

As per claim 29

Ram discloses a processor and a storage device in communication with said processor and storing instructions adapted to be executed by said processor (page 1, paragraph [0009] and page 9, paragraph [0182]) to present at least one option (page 2, paragraph [0028]) quote area presenting a plurality of option quotes (Figure 12: 124 & Figure 51) and present an order entry area comprising input areas for inputting two or more option orders (Figure 12: 128). Examiner notes that the input area can be used multiple times to accommodate the input of multiple orders.

Ram further discloses selection of one of the presented plurality of option quotes results in population of appropriate input areas of the order entry area with an option order corresponding to the selected option quote (Figure 12). Examiner notes that selecting a security could be done by typing or rather inputting the security symbol into the tab set 128. Examiner further notes that applicant is correct in saying that a display at a trader's location will display data for a selected security and the displayed data will be displayed in a tab set, however examiner further asserts that this information is not solely in tabs 120 or 124 but also in tab 128. Therefore, by selecting a security data is populated (value/bid/ask/last/change/high/low, etc.) that facilitates the ordering of securities. Finally examiner asserts that Ram (Figure 12: 128) thus does disclose displaying a plurality of data and populating data in an appropriate input area of an order entry area.

As per claim 30

Ram discloses receiving a selection of one of the presented plurality of option quotes (Level I data) (page 3, paragraphs [0042-0043]).

As per claim 34

Ram discloses an option (page 2, paragraph [0028]) server for receiving option quote information and for transmitting option quote information and a client device for receiving option quote information from the option server (page 9, paragraph [0178]), for presenting at least one option (page 2, paragraph [0028]) quote area presenting a

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plurality of option quotes (Figure 12: 124 & Figure 51) and presenting an order entry area comprising input areas for inputting two or more option orders (Figure 12: 128). Examiner notes that the input area can be used multiple times to accommodate the input of multiple orders.

Ram further discloses selection of one of the presented plurality of option quotes results in population of appropriate input areas of the order entry area with an option order corresponding to the selected option quote (Figure 12). Examiner notes that selecting a security could be done by typing or rather inputting the security symbol into the tab set 128. Examiner further notes that applicant is correct in saying that a display at a trader's location will display data for a selected security and the displayed data will be displayed in a tab set, however examiner further asserts that this information is not solely in tabs 120 or 124 but also in tab 128. Therefore, by selecting a security data is populated (value/bid/ask/last/change/high/low, etc.) that facilitates the ordering of securities. Finally examiner asserts that Ram (Figure 12: 128) thus does disclose displaying a plurality of data and populating data in an appropriate input area of an order entry area.

As per claim 36

Ram discloses receiving a number of option quotes to present in at least one of the at least one option quote area and (page 9, paragraph [0178], lines 1-8).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9, 11-12 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication Number 2003/0004853 to Ram et. al (hereinafter Ram) in view of US Patent Number 6,876,981 to Berckmans (hereinafter Berckmans) further in view of Official Notice.

As per claims 8, 11 and 22

Ram discloses using color indicators for differentiating types of order data (page 4, paragraph [0060] and page 13, paragraph [0235]).

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Ram does not specifically teach determining a color based on a difference between a strike price of an option quote and a price of a security underlying the presented option quote and presenting the option quote in association with the color.

Berckmans discloses that voluminous information displayed textually is easily confused and misinterpreted and that by representing financial data using colors users can more easily and quickly perceive and process displayed information (page 6, lines 16- 22). Examiner notes that this could be easily adapted to determine a color based on a difference between a strike price of an option quote and a price of a security underlying the presented option quote and present the option quote in association with the color.

Therefore it would have been obvious to one skilled in the art at the time the invention was made to determine a color based on a difference between a strike price of an option quote and a price of a security underlying the presented option quote and present the option quote in association with the color as taught by Berckmans to simplify the perception and processing of displayed financial data.

The combination of Ram and Berckmans does not specifically teach a plurality of brightness levels of a color.

Official Notice is taken that it is old and well known within the art to determine a brightness level of color for ease of perception and processing of displayed information. Humans perceive different shades/brightness levels of colors as separate "colors" all together (lime green vs. hunter green, sky blue vs. navy blue, etc.). Examiner notes that different brightness levels of colors are thus perceived as different "colors" all together.

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the color based financial visual data of the combination of Ram and Berckmans to include a plurality of brightness levels of color to add a complexity of perceptible information available visually.

As per claims 9, 12 and 23

Ram discloses using color indicators for differentiating types of order data (page 4, paragraph [0060] and page 13, paragraph [0235]). Ram also discloses determining an option exchange (NASDAQ) associated with an option quote (page 11, paragraph [0204]).

Ram does not specifically teach determining a color associated with the option exchange and presenting the option quote in association with the color.

Berckmans discloses that voluminous information displayed textually is easily confused and misinterpreted and that by representing financial data using colors users can more easily and quickly perceive and process displayed information (page 6, lines 16- 22). Examiner notes that this could be easily adapted to determine a color associated with the option exchange and present the option quote in association with the color.

Therefore it would have been obvious to one skilled in the art at the time the invention was made to determine a color associated with the option exchange and

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present the option quote in association with the color as taught by Berckmans to simplify the perception and processing of displayed financial data.

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1- 37 are rejected under 35 U.S.C. 101 because the claims must be (1) tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to non-statutory subject matter. Merely having “another statutory class” in the preamble and not in the body of the claim is also not sufficient to render the claim statutory.

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

(10) Response to Argument

In the Appeal Brief filed August 12, 2008, Appellant makes the following arguments:

(A) Ram can in no way be seen to disclose or suggest that when one of a presented plurality of option quotes is selected, appropriate input areas of an order entry area are populated with an option order corresponding to the selected option quote.

(B) Brightness of a color based on a difference between a strike price of the presented option quote and a price of a security underlying the presented option quotes isn't either old or well known.

Examiner will address Appellant's arguments in sequence as they appear in the brief.

Response to Argument (A):

In response to the first argument, the Examiner respectfully submits that that tab set 128, figure 12 in Ram clearly shows displaying a plurality of data with respect to the security input in the "go" region which consequently changes the "value" region dependent upon the amount of shares input into the order entry area. Examiner notes that this clearly shows that data is populated in an appropriate input area of an order entry area upon the selection of an option quote. As to the argument that "Ram fails to otherwise disclose how option order information may be populated into tab set 128," although Ram may not specifically and extensively spell out how this information is populated it is obvious by Figure 12 that the data changes with respect to the security

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chosen in the "go" region. Further, Examiner notes that the entire window shows exclusively the date for the one security in Figure 12, so although it has been debated whether or not the claim states a direct correlation, it can at least be said that the information in Ram is correlated. Lastly, examiner maintains that selecting a security could be done by typing or rather inputting the security symbol into the tab set 128, and by selecting a security, data is populated (value/bid/ask/last/change/high/low/etc.) that facilitates the ordering of securities. Therefore, it is obvious to one skilled in the art at the time of invention that Ram discloses that when one of a presented plurality of option quotes is selected, appropriate input areas of an order entry area are populated with an option order corresponding to the selected option quote.

Response to Argument (B):

In response to the second argument, the Examiner respectfully submits that Applicant misinterprets examiner's rejection of claim 8, and for the sake of clarity, examiner rejected claim 8 under 35 U.S.C 103(a) by Ram in view of Berckmans further in view of Official Notice. Ram discloses using color indicators for differentiating types of order data (short/option/margin/profit/loss/etc.) (paragraphs [0060 & 0235]) although Ram does not specifically teach determining a color based on a difference between a strike price of an option quote and a price of a security underlying the presented option quote and presenting the option quote in association with the color. It should also further be noted that the difference between the underlying security's current market price and the option's strike price represents the amount of profit per share gained upon the exercise or the sale of the option. Therefore, since Ram teaches using color

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indicators for differentiating types of order data (profit/loss), it can be reasonably ascertained that Ram teaches representing a difference between a strike price of an option quote and a price of a security underlying the presented option quote and presenting the option quote in association with the color. Berckmans further discloses that voluminous information displayed textually is easily confused and misinterpreted and that by representing financial data using colors users can more easily and quickly perceive and process displayed information (page 6, lines 16-22). Examiner noted that this could be easily adapted to determine a color based on a difference between a strike price of an option quote and a price of a security underlying the presented option quote and present the option quote in association with the color and the combination of Ram and Berckmans would simplify the perception and processing of displayed financial data. Official notice was taken simply to overcome the fact that neither Ram or Berckmans specifically taught a plurality of brightness levels of color to associate the difference with. Examiner asserted that it is old and well known to determine a brightness level of color for ease of perception and processing of displayed information. The evidence to support this assertion is that humans perceive different shades/brightness levels of colors as separate "colors" all together (lime green vs. hunter green, sky blue vs. navy blue, etc.). Examiner notes that different brightness levels of colors are thus perceived as different "colors" all together and by incorporating different brightness levels of colors it would further increase the complexity of perceptible information available visually, as addressed by Ram and Berckmans.

Therefore the combination of Ram in view of Berckmans further in view of Official Notice

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teaches associating a plurality of brightness levels determined based on the difference between a strike price of the presented option quote and a price of a security underlying the presented option quotes.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) Reopen prosecution. Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR

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41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/James A. Kramer/
Supervisory Patent Examiner, Art Unit 3693

/Jessica L Lemieux/
Patent Examiner, Art Unit 3693

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Wynn W. Coggins/

Director, TC 3600

Conferees:

Vincent Millin /VM/
Appeals Conference Specialist, TC 3600

/J.A.K./
James A. Kramer
Supervisory Patent Examiner, Art Unit 3693